

ASSEMBLY BILL

No. 1090

Introduced by Assembly Member Fong

February 22, 2013

An act to amend Section 1097 of, and to add Sections 1097.1, 1097.2, 1097.3, and 1097.4 to, the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, as introduced, Fong. Public officers: conflicts of interest: contracts.

The Political Reform Act of 1974 establishes the Fair Political Practices Commission as the agency responsible for enforcing the act. The act authorizes the Commission to seek and impose administrative and civil penalties against persons who violate the act, as prescribed.

Existing law prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law makes a willful violation of this prohibition a crime.

This bill would also make a person who violates the prohibition against being financially interested in a contract, or who causes another person to violate or who aids and abets another person in violating the prohibition, subject to administrative and civil fines, as specified. The bill would authorize the Commission to enforce these violations by bringing an administrative or civil action against a person who is subject to the prohibition, as specified.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes

upon a 2/3 vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1097 of the Government Code is amended
2 to read:

3 1097. ~~Every~~(a) An officer or person prohibited by the laws
4 of this state from making or being interested in contracts, or from
5 becoming a vendor or purchaser at sales, or from purchasing ~~script~~
6 *scrip*, or other evidences of indebtedness, including any member
7 of the governing board of a school district, who willfully violates
8 any of the provisions of such *provision of those laws*; is punishable
9 by a fine of not more than one thousand dollars (\$1,000), or by
10 imprisonment in the state prison, and is forever disqualified from
11 holding any office in this state.

12 (b) *An officer or person prohibited by the laws of this state from*
13 *making or being interested in contracts, or from becoming a vendor*
14 *or purchaser at sales, or from purchasing scrip, or other evidences*
15 *of indebtedness, including any member of the governing board of*
16 *a school district, who violates any provision of those laws, who*
17 *causes any other person to violate any provision of those laws, or*
18 *who aids and abets any other person in the violation of any*
19 *provision of those laws shall be liable in an administrative action*
20 *commenced by the Commission as provided in Section 1097.1 or*
21 *a civil action commenced by the Commission as provided in Section*
22 *1097.2.*

23 (c) *The Commission shall not commence an administrative or*
24 *civil action pursuant to subdivision (b) against a person if a*
25 *criminal prosecution is being pursued against that person pursuant*
26 *to subdivision (a).*

27 (d) *If two or more persons are responsible for a violation of*
28 *this section, they shall be jointly and severally liable.*

29 (e) *For purposes of this section and Sections 1097.1, 1097.2,*
30 *1097.3, and 1097.4, “Commission” means the Fair Political*
31 *Practices Commission.*

1 SEC. 2. Section 1097.1 is added to the Government Code, to
2 read:

3 1097.1. (a) Upon the sworn complaint of a person or on its
4 own initiative, the Commission may investigate possible violations
5 of Section 1090 relating to any officer or person subject to that
6 section. Within 14 days after receipt of a complaint, the
7 Commission shall notify in writing the person who made the
8 complaint of the action, if any, the Commission has taken or plans
9 to take on the complaint, together with the reasons for such action
10 or nonaction. If no decision has been made within 14 days, the
11 person who made the complaint shall be notified of the reasons
12 for the delay and shall subsequently receive notification as provided
13 above.

14 (b) The Commission shall not make a finding of probable cause
15 to believe Section 1090 has been violated unless, at least 21 days
16 prior to the Commission's consideration of the alleged violation,
17 the person alleged to have violated Section 1090 is notified of the
18 alleged violation by service of process or registered mail with
19 return receipt requested, provided with a summary of the evidence,
20 and informed of his or her right to be present in person and
21 represented by counsel at any proceeding of the Commission held
22 for the purpose of considering whether probable cause exists for
23 believing the person violated Section 1090. Notice to the alleged
24 violator shall be deemed made on the date of service, the date the
25 registered mail receipt is signed, or if the registered mail receipt
26 is not signed, the date returned by the post office. A proceeding
27 held for the purpose of considering probable cause shall be private
28 unless the alleged violator files with the Commission a written
29 request that the proceeding be public.

30 (c) If the Commission determines there is probable cause to
31 believe Section 1090 has been violated, it may hold a hearing to
32 determine if a violation has occurred. Notice shall be given and
33 the hearing conducted in accordance with the Administrative
34 Procedure Act (Chapter 5 (commencing with Section 11500) of
35 Part 1 of Division 3 of Title 2). The Commission shall have all the
36 powers granted by that chapter. If the Commission determines that
37 no violation has occurred, it shall issue a letter so stating. If the
38 Commission determines on the basis of a hearing that a violation
39 has occurred, it shall issue an order requiring the violator to cease
40 and desist violation of Section 1090, pay a monetary penalty of

1 up to five thousand dollars (\$5,000) per violation to the
2 Commission for deposit in the General Fund of the state, or both.

3 (d) If the Commission rejects the decision of an administrative
4 law judge made pursuant to Section 11517, the Commission shall
5 state the reasons in writing for rejecting the decision.

6 (e) The Commission may subpoena witnesses, compel their
7 attendance and testimony, administer oaths and affirmations, take
8 evidence and require by subpoena the production of books, papers,
9 records, or other items material to the performance of the
10 Commission's duties or exercise of its powers under this section.

11 (f) The Commission may refuse to excuse a person from
12 testifying, or from producing books, records, correspondence,
13 documents, or other evidence in obedience to a subpoena of the
14 Commission notwithstanding an objection that the testimony or
15 evidence required of him or her may tend to incriminate that
16 person. An individual shall not be prosecuted in any manner or
17 subjected to any penalty or forfeiture for or on account of any
18 transaction, act, matter, or thing concerning which he or she is
19 compelled, after having claimed his or her privilege against
20 self-incrimination, to testify or produce evidence, except that the
21 individual so testifying shall not be exempt from prosecution and
22 punishment for perjury committed in so testifying. Immunity shall
23 not be granted to a witness under this section unless the
24 Commission has notified the Attorney General of its intention to
25 grant immunity to the witness at least 30 days in advance or unless
26 the Attorney General waives this requirement.

27 (g) An interested person may seek judicial review of any action
28 of the Commission under this section.

29 (h) The Commission shall not commence an administrative
30 action pursuant to this section against a person who is subject to
31 Section 1090 alleging a violation of that section if the Commission
32 has commenced a civil action pursuant to Section 1097.2 against
33 that person for the same violation.

34 (i) An administrative action shall be brought pursuant to this
35 section no later than five years after the date on which the violation
36 occurred.

37 (1) For purposes of this subdivision, the commencement of the
38 administrative action shall be the date of the service of the probable
39 cause hearing notice, as required by subdivision (b), upon the
40 person alleged to have violated Section 1090.

1 (2) If the person alleged to have violated Section 1090 engages
2 in the fraudulent concealment of his or her acts or identity, the
3 five-year period shall be tolled for the period of concealment. For
4 purposes of this subdivision, “fraudulent concealment” means the
5 person knows of material facts related to his or her duties under
6 Section 1090 and knowingly conceals them in performing or failing
7 to perform those duties, for the purpose of defrauding the public
8 of information to which it is entitled.

9 (3) If, upon being ordered by a superior court to produce any
10 documents sought by a subpoena in any administrative action under
11 this section, the person alleged to have violated Section 1090 fails
12 to produce documents in response to the order by the date ordered
13 to comply therewith, the five-year period shall be tolled for the
14 period of the delay from the date of filing of the motion to compel
15 until the date the documents are produced.

16 SEC. 3. Section 1097.2 is added to the Government Code, to
17 read:

18 1097.2. (a) The Commission may file a civil action against a
19 person subject to the prohibitions identified in Section 1090. A
20 person held liable for a violation of Section 1090 shall be subject
21 to a civil fine payable to the Commission for deposit in the General
22 Fund of the state in an amount not to exceed three times the value
23 of the financial benefit received by the person, as determined by
24 the trier of fact.

25 (b) The Commission shall not commence a civil action pursuant
26 to this section alleging a violation of Section 1090 if the
27 Commission has commenced an administrative action pursuant to
28 Section 1097.1 against the person for the same violation.

29 (c) A civil action brought by the Commission pursuant to this
30 section shall be filed not more than four years after the date the
31 violation occurred.

32 SEC. 4. Section 1097.3 is added to the Government Code, to
33 read:

34 1097.3. (a) In addition to any other remedies available, the
35 Commission may obtain a judgment in superior court for the
36 purpose of collecting any unpaid monetary penalties, fees, or civil
37 penalties imposed pursuant to Section 1097.1 or 1097.2. The action
38 may be filed as a small claims, limited civil, or unlimited civil
39 case, depending on the jurisdictional amount. The venue for this
40 action shall be in the county where the monetary penalties, fees,

1 or civil penalties were imposed. In order to obtain a judgment in
2 an action under this section, the Commission shall show, following
3 the procedures and rules of evidence as applied in ordinary civil
4 actions, all of the following:

5 (1) The monetary penalties, fees, or civil penalties were imposed
6 following the procedures set forth in Section 1097.1 or 1097.2.

7 (2) The defendant or defendants in the action were notified, by
8 actual or constructive notice, of the imposition of the monetary
9 penalties, fees, or civil penalties.

10 (3) A demand for payment has been made by the Commission
11 and full payment has not been received.

12 (b) A civil action brought pursuant to subdivision (a) shall be
13 commenced within four years after the date on which the monetary
14 penalty, fee, or civil penalty was imposed.

15 SEC. 5. Section 1097.4 is added to the Government Code, to
16 read:

17 1097.4. (a) If the time for judicial review of a final
18 Commission order or decision issued pursuant to Section 1097.1
19 has lapsed, or if all means of judicial review of the order or decision
20 have been exhausted, the Commission may apply to the clerk of
21 the superior court for a judgment to collect the penalties imposed
22 by the order or decision, or the order as modified in accordance
23 with a decision on judicial review.

24 (1) The application, which shall include a certified copy of the
25 order or decision, or the order as modified in accordance with a
26 decision on judicial review, and proof of service of the order or
27 decision, constitutes a sufficient showing to warrant issuance of
28 the judgment to collect the penalties. The clerk of the court shall
29 enter the judgment immediately in conformity with the application.

30 (2) An application made pursuant to this section shall be made
31 to the clerk of the superior court in the county where the monetary
32 penalties, fees, or civil penalties were imposed by the Commission.

33 (3) A judgment entered in accordance with this section has the
34 same force and effect as, and is subject to all the provisions of law
35 relating to, a judgment in a civil action and may be enforced in the
36 same manner as any other judgment of the court in which it is
37 entered.

38 (4) The Commission may bring an application pursuant to this
39 section only within four years after the date on which the monetary
40 penalty, fee, or civil penalty was imposed.

1 (b) The remedy available under this section is in addition to
2 those available under Section 1097.3 or any other law.
3 SEC. 6. The Legislature finds and declares that this bill furthers
4 the purposes of the Political Reform Act of 1974 within the
5 meaning of subdivision (a) of Section 81012 of the Government
6 Code.

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